

Remarks

This Amendment is in response to the Final Office Action dated **October 31, 2006**. Claims 1, 2, 4, 5, 7-10, 15, 26-28, 34, and 35 were rejected under 35 USC 103(a) as being unpatentable over Cox (USPN 6,652,579) in view of Erbel (US 2004/0116998). Applicant has amended claim 1. No new matter has been added. The rejection is addressed below.

35 USC §103

Claims 1, 2, 4, 5, 7-10, 15, 26-28, 34, and 35 were rejected under 35 USC 103(a) as being unpatentable over Cox (USPN 6,652,579) in view of Erbel (US 2004/0116998). Applicant disagrees with the rejection. Nevertheless, claim 1 has been amended without prejudice or disclaimer and the amended limitation reads similar to that of claim 26. Amended claim 1 recites, “each strut extending from a peak at the distal end of the serpentine band to a trough at the proximal end of the serpentine band, at least one of the struts being a special strut”. Claim 26 recites, “each special strut extending from the peak of the serpentine band to the trough of the serpentine band and having a radiopaque marker therebetween”. Cox does not teach or suggest special struts extending between a peak at the distal end of the serpentine band and a trough at the proximal end of the serpentine band. Erbel does not provide this missing teaching.

In the argument of the Final Office Action the language of claim 26 and now amended claim 1 was characterized as “the special strut extends from (*the direction of*) the peak to (*toward the direction of*) the trough”. This reading of the claim is simply not what is recited. The claim must be evaluated based upon the recited claim language.

Neither Cox nor any of the cited references teach the special strut extending from a peak to a trough as claimed. The special struts of Cox as defined in the Office Action are disposed on connectors which connect one serpentine band to another serpentine band. A special strut of the instant invention connects a peak to a valley within a serpentine band

Furthermore, even if for the sake of argument, one were to use the above-mentioned language of the Office Action, Cox does not teach or suggest the limitations of claims 1 and 26. The special struts of Cox as identified in the Office Action extend parallel to the longitudinal axis of the stent of Cox rather than in "*the direction of the peak toward the direction of the trough*" which is a direction oblique to the longitudinal axis. Erbel does not supply the missing teaching. For at least the above reasons claims 1 and 26 and those claims dependent thereof are patentable in light of Cox and Erbel.

Applicant respectfully requests that the rejection be withdrawn.

Conclusion

In view of the foregoing it is believed that the present application, with claims 1, 2, 4-10, 13-15, 26-28, 34, and 35, is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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